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Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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The City of Orem,	:	Appellate No. 20020316-CA
	:	
Plaintiff,	:	
	:	Trial Court No. 021200015
vs.	:	
	:	
RICARDO ABRAHAM CARRASCO,	:	Priority No. 2
	:	
Defendant.	:	

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BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF GUILTY DATED MARCH 15, 2002, ENTERED BY
THE HONORABLE JOHN C. BACKLUND, FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, OREM DEPARTMENT

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FILED
Court of Appeals
FEB - 8 2003

FILED
Utah Court of Appeals

FEB 19 2003

Paulette Siagg
Clerk of the Court

ADDENDUM

No addendum is needed for this appeal.

IN THE UTAH COURT OF APPEALS

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The City of Orem,	:	Appellate No. 20020316-CA
	:	
Plaintiff,	:	
	:	Trial Court No. 021200015
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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Utah Code Ann. §78-2(a)-3(2)(d) and (f) (1953, as amended).

STATEMENT OF THE ISSUES

A. Was the Judge correct in insisting on going ahead with the trial, even though there was substantial evidence that the parties may have had some confusion about the time of trial, and whether it was a trial or pretrial conference?

B. Was the Defendant denied fundamental fairness as required by the Utah and U.S. Constitutions?

C. Did the prosecution present evidence beyond a reasonable doubt that Defendant was indeed guilty of the crime of stalking?

Standard of Review: The standard of review is that, if the Trial Court's Findings of Fact are erroneous or clearly erroneous, said Findings of Fact should be set aside. U.R.C.P. 52(a); State v. Pena, 869 P. 2d 932.

STATEMENT OF FACTS

5. STATEMENT OF FACTS:

a. The City of Orem alleges that the Defendant committed the crime of stalking by seeing or attempting to contact the Victim, Charlotte McKinley, after being told that she no longer wanted to see him.

b. The case was unable to be resolved at pretrial, so the matter was set for

trial. The Defendant did not appear for the trial, and claims that, because of problems with his roommates disposing of his mail, he did not receive notice of the trial date from his attorney.

c. At the trial, the Victim testified that on several occasions the Defendant came to her place of work. On many occasions, she had to go to the back of the store and have other employees cover while she waited for the Defendant to leave because she did not want to see him. She further testified that she and Defendant had never had any kind of relationship, and that the Defendant's advances were unwanted. Defendant also contacted her in the parking lot when she was getting out of class at school. Because of the repeated attempts to contact her, she finally called the police and reported the situation.

SUMMARY OF ARGUMENT

Defendant failed to appear at the trial; at sentencing, Defendant informed the Court that his roommates sometimes threw his mail away rather than give it to him, so he did not receive the notice of the trial. Because the Court refused to continue the trial, Defendant was denied substantial fairness guaranteed under the U.S. and Utah Constitutions. Further, Defendant had evidence to present that would have contradicted some of the testimony of the victim, but because the Court refused to continue the trial, or to grant a new trial, Defendant was able to present his evidence.

ARGUMENT

POINT I

DID THE PROSECUTION PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY OF THE CRIME OF STALKING?

It is well-established law in Utah as well as other jurisdictions that, in order to convict a defendant of a crime, the prosecution must prove guilt beyond a reasonable doubt. The specific elements of the crime of retail theft which must be proven by the prosecution, and which are at issue here, are outlined in §76-5-106.5(2), U.C.A. (1953), as amended:

A person is guilty of stalking who:

(a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person:

(i) to fear bodily injury to himself or a member of his immediate family;

or

(ii) to suffer emotional distress to himself or a member of his immediate family;

(b) has knowledge or should have knowledge that the specific person :

(i) will be placed in reasonable fear of bodily injury to himself or a member of his immediate family; or

(ii) will suffer emotional distress or a member of his immediate family will suffer emotional distress; and

(c) whose conduct:

(i) induces fear in the specific person of bodily injury to himself or a member of his immediate family;

(ii) causes emotional distress in the specific person or a member of his immediate family.

In the present case, the victim testified that she was very much afraid of Defendant and the attention he was giving to her. However, because Defendant did not appear at his trial, he was not able to produce the evidence he had that would have shown that the relationship between Defendant and the victim was much more extensive than the victim was

willing to admit at the trial. Had the Defendant been able to testify at the trial, he could have shown that the victim had actually called him on his cell phone, not just once, but many times. Because the Defendant was not able to present his evidence, the Court could not effectively decide whether the City had proven Defendant's guilt beyond a reasonable doubt, as is required under the Constitution.

POINT II

WAS THE JUDGE CORRECT IN INSISTING ON GOING AHEAD WITH THE TRIAL EVEN THOUGH THERE WAS SUBSTANTIAL EVIDENCE THAT THE PARTIES MAY HAVE HAD SOME CONFUSION ABOUT THE TIME OF TRIAL, AND WHETHER IT WAS A TRIAL OR PRETRIAL CONFERENCE?

On several occasions, both this court and the Utah Supreme Court have addressed the issue of when a trial court should grant a continuance of a trial. In almost every case, both courts have held that this decision is within the discretion of the trial court. In State v. Featherstone, 781 P. 2d 424, 431, (UT 1989), the Utah Supreme Court stated: "In order to constitute reversible error, the error complained of must be sufficiently prejudicial that there is a reasonable likelihood of a more favorable result for the defendant in its absence."

More recently, this Court has also addressed this issue. This case involved a defendant whose request for a continuance of the trial was denied by the trial court, but later reversed by this court. The ruling held in part "Tolano's right to a fair trial outweighed any inconvenience to the court, the opposing party, and the jury that may have been caused by a continuance." State v. Tolane, 19 P.3d 400, 403 (Ut App. 2001). The court continued in stating that although inconvenience was one factor to consider in determining whether a

continuance was warranted, it was only one factor, and would not outweigh the Defendant's right to a fair trial. More importantly for the present case, this court went on to state as follows: "the final factor—the extent to which Tolano might have suffered harm as a result of the court's denial—is the 'most important among the factors.'" Id. At 404. The decision also cited State v. Aurellano, 964 P. 2d 1167 (Utah Ct. App. 1998), stating "Therefore, to establish that the prosecution's error was not prejudicial, the State must persuade the court that there is no reasonable likelihood that, absent the prosecution's error, the outcome would have been more favorable for defendant." Id. At 1171.

Applying the standards set by the above two cases, the court should have continued the trial when the defendant did not appear, as requested by counsel. Very clearly, Defendant was prejudiced by not being able to testify and defend himself at trial. There were very few witnesses who would have been inconvenienced by continuing the trial, or granting a new trial, and according to the above cases, Defendant's Constitutional right to appear and defend himself outweighs any inconvenience incurred by the witnesses or the Court in granting a continuance or new trial.

POINT III

WAS THE DEFENDANT DENIED FUNDAMENTAL FAIRNESS AS REQUIRED BY THE UTAH AND U.S. CONSTITUTIONS?

One of the most basic rights guaranteed under the Constitution is that of fundamental fairness. "The essential requirement exacted of the states by the due process clause of the

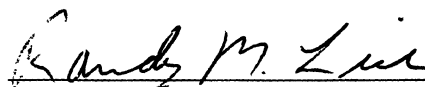
Fourteenth amendment . . . is that the trial shall be fair.” 21 Am. Jur. 2d, Criminal Law §647. Such due process rights require that the Defendant, at a minimum, have an opportunity to examine adverse witnesses. *Id.* The Fourth Circuit Court of Appeals has also held that the due process clause unquestionably guarantees to the defendant a right to rebut the case proved against him, and this right in turn includes the right to cross-examine witnesses who testify on behalf of the state. U.S. vs. Grande, 620 F. 2d 1026 (CA4,1980).

In the present case, Defendant did not appear at trial, but was able to explain at his sentencing that he believed that his roommates had not given to him the letter notifying him of his court date. The right to appear and defend oneself against one’s accusers is, as noted above, a basic, fundamental right. It is of such importance that the trial court should have allowed the Defendant to continue the trial, or at the very least, granted a new trial. Failure to do either violated Defendant’s right to fundamental fairness in the proceedings below.

SUMMARY

The City did not prove beyond a reasonable doubt that Defendant was guilty of the crime of stalking, and the Trial Court abused its discretion in refusing to grant to Defendant a continuance or a new trial.

DATED this 7th day of February, 2003.



Randy M. Lish
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2003, I mailed a true and correct copy of the foregoing Brief of Appellant/Defendant to the Orem City Prosecutor, 97 E. Center, Orem, UT 84057.

Randy M. Zier